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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. [redacted] '80

UNITED STATES OF AMERICA, *ex rel.* JOSIP FERETIC, a/k/a JOE FERETIC,

Petitioner,

-v-

EDWARD J. SHAUGHNESSY, as District Director of the Immigration and Naturalization Service for the District of New York, etc.,

Respondent.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on the above entitled case on April 4, 1955.

Citations to Opinions Below

The memo opinion of the special inquiry officer is unreported and is printed in the Appendix. The opinion of the District Court is printed in the Appendix

and is reported in 122 F. Supp. 739. The opinion of the Circuit Court of Appeals is printed in the Appendix and is unreported.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on April 4, 1955. The jurisdiction of this court is invoked under 28 U. S. C., Section 1254(1).

Questions Presented

1. Whether the documents presented by an alien seaman to the immigrant inspector rather than his subjective intent is determinative of his status as a non-immigrant within the provisions of Section 6 of the Refugee Relief Act and Section 4 of the Displaced Persons Act.

2. Whether the Administrative Procedures Act applies to administrative procedures under Section 6 of the Refugee Relief Act and Section 4 of the Displaced Persons Act.

Statutes Involved

The statutory provisions involved are Section 4 of the Displaced Persons Act of 1948, as amended, and Section 6 of the Refugee Relief Act of 1953, 50 App. 1971d.

Statement

Petitioner entered the United States in 1944 and after having remained ashore for a time longer than

permitted, was ordered deported. He applied to the Attorney General to have the facts in his case presented to the Congress, in order to give that body the opportunity to pass on his application to remain in this country as a displaced person under Section 4 of the Displaced Persons Act of 1948 and as a Refugee under Section 6 of the Refugee Relief Act of 1953.

The Attorney General, after an administrative hearing, refused petitioner's request. This refusal was based on one single ground; the Attorney General claims he is not obligated to present the petitioner's case to the Congress for the reason that the petitioner did not enter this country lawfully as a bona fide nonimmigrant in 1944 because at that time the petitioner had, at the exact moment of entry, a subjective intent to remain ashore.

It was nowhere alleged that the petitioner intended to remain ashore without first obtaining permission from the proper authorities.

On these facts a writ of habeas corpus was issued by the District Court on the authority of *U. S.* v. *Prince Line, Ltd.,* 189 F. (2) 386, and *Brownell* v. *Gutnayer,* 212 F. (2) 462. The action of the District Court was reversed by the Circuit Court of Appeals.

Reasons for Granting the Writ

1. The decision of the Court below in the instant case is in direct conflict with the decision of the Court of Appeals for the District of Columbia Circuit in *Brownell* v. *Gutnayer,* 212 F. (2) 462. The District of Columbia Circuit follows the decision in *United States* v. *Prince Line, Ltd.,* 189 F. (2) 386.

2a. The question presented is of great importance. Section 4 of the Displaced Persons Act and Section 6 of the Refugee Relief Act have made provision for twenty thousand applications. Great numbers of applications have not been and will not be presented to Congress solely on the basis of an immigrant officer's determination that the applicant at the exact instant of entry, many years previous, had a subjective intent to remain, even though such subjective intent may have been conditioned on obtaining prior permission from the proper authorities. (It is conceded, however, by the Attorney General, that if the subjective intent occurs one fraction of a second after entry, the applicant then is eligible.)

b. Under the provisions of Public Law 86, 8 U. S. C. 1421, a veteran who has actively and honorably served in the Armed Forces between June 24, 1950, and July 1, 1955 (Korean War veterans) and who has been lawfully admitted to the United States may be naturalized.

Following the precedent of the instant case, the Immigration Service denies, and will deny, to large numbers of veterans, the privilege of naturalization if the immigrant officer determines that at the time of their last entry they had a subjective intent to remain. This will affect a great many men who have served and who are serving honorably in the Armed Forces. In place of a fulfilled legislative promise of naturalization, these men are now confronted by a broken promise and deportation.

3a. The decision of the Court below is believed to be erroneous and the conflicting decision of the Dis-

trict of Columbia Court of Appeals in *Brownell* v. *Gutnayer* is believed to be correct. Section 6 of the Refugee Relief Act use certain words of art to describe those individuals who could qualify to have their cases considered by the Congress. These words of art, *i. e.*, "he lawfully entered the United States *as* a bona fide non-immigrant", had already been thoroughly discussed and judicially construed in *Prince Line* v. *United States* and *Brownell* v. *Gutnayer* when Section 6 was enacted in its final form on August 31, 1954. The Congress took the language of these cited cases and enacted this language into the law. Although the Legislature has already relied on *Prince Line* v. *United States* and *Brownell* v. *Gutnayer* in framing the statute, the instant case now would overrule the *Prince Line* case, ignore the *Gutnayer* case, and frustrate the legislative intent.

b. In any event, under the terms of the statute, Congress must ultimately approve all applications. If there is doubt as to legislative intent, why not let the Legislature itself resolve the question?

4. This Court has ruled that the Administrative Procedures Act applies to the Immigration and Nationality Act. *Shaughnessy* v. *Pedreiro*—Decided April 25, 1955.

Section 15 of the Refugee Relief Act of 1953, as amended, states, "except as otherwise expressly provided by this Act, all of the provisions of the Immigration and Nationality Act shall be applicable under this Act".

This being so, it must be held that the Administrative Procedures Act is applicable to procedures under

Section 6 of the Refugee Relief Act. No attempt was made to comply with the Administrative Procedures Act in the hearing procedure used and in qualifying the immigration officers conducting the hearings.

Conclusion

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

ALBERT MAYER,
Counsel for Petitioner.

Excerpt from Public Law 86

PUBLIC LAW 86—83D CONGRESS

CHAPTER 162—1ST SESSION

H. R. 4233

AN ACT

To provide for the naturalization of persons serving in the Armed Forces of the United States after June 24, 1950.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of sections 310 (d) and 318 of the Immigration and Nationality Act, any person, not a citizen, who, after June 24, 1950, and not later than July 1, 1955, has actively served or actively serves, honorably, in the Armed Forces of the United States for a period or periods totaling not less than ninety days and who (1) . . . (2) having been lawfully admitted to the United States, and having been physically present within the United States for a single period of at least one year at the time of entering the Armed Forces, may be naturalized on petition filed not later than December 31, 1955, upon compliance with all the requirements of the Immigration and Nationality Act, except that— . . .

Opinion in *Brownell* against *Gutnayer*

BROWNELL, Atty. Gen.

v.

GUTNAYER.

No. 11733.

United States Court of Appeals,
District of Columbia Circuit.

Argued March 12, 1954.

Decided April 22, 1954.

Before EDGERTON, PRETTYMAN, and WASHINGTON, Circuit Judges.

EDGERTON, Circuit Judge.

Section 4 of the Displaced Persons Act of 1948, 62 Stat. 1011, as amended, 64 Stat. 224, 66 Stat. 277, 50 U. S. C. A. Appendix, § 1953, provides that "a displaced person residing in the United States" may apply to the Attorney General for an adjustment of his immigration status, and that "if the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien has been of good moral character for the preceding five years and that such alien is qualified under the provisions of this section, the Attorney General shall report to the Congress all of the pertinent facts in the case." The term "displaced person residing in

the United States" is defined, in substance, as a person who establishes "that he lawfully entered the United States as a non-immigrant", that he is displaced because of events subsequent to the outbreak of World War II, and that he cannot return home because of racial, religious, or political persecution.

It appears without dispute that appellee was admitted to the United States on January 25, 1946 as an accredited official of a foreign government, and that the Attorney General has denied adjustment of his immigration status on the ground that he entered the United States unlawfully in that at the time of his entry he intended to remain here permanently. In his suit, appellee asks a declaratory judgment that he is eligible for relief under the Displaced Persons Act and that he cannot be denied adjustment of status on the ground that he entered the United States unlawfully. The Attorney General appeals from a judgment "that the matter shall be referred back to the Attorney General for a consideration of all the facts and circumstances relevant to the status of the plaintiff under the Displaced Persons Act, but that plaintiff shall not be denied adjustment of status as a displaced person upon the sole ground that he entered the United States unlawfully."

[1-3] Appellee's intention to remain permanently in the United States did not make it unlawful for him to enter the United States "as a non-immigrant" on being duly admitted as an accredited official of a foreign government under § 3 of the Immigration Act of 1924, 43 Stat. 154, as then amended, 54 Stat. 711.[1] *Cf. United States* v. *Prince Line,* 2 Cir., 1951, 189 F.

[1] Now 8 U. S. C. A. § 1101(a)(15)(A).

2d 386. And the Attorney General's discretion under the Displaced Persons Act is subject to judicial review for plain error of law. *Cf. McGrath* v. *Kristensen,* 340 U. S. 162, 71 S. Ct. 224, 95 L. Ed. 173; *United States ex rel. Accardi* v. *Shaughnessy,* 347 U. S. 260, 74 S. Ct. 499. However, we think the final clause of the appealed judgment should provide only that the plaintiff is not to be denied adjustment of status as a displaced person upon the theory that an intention to remain permanently in the United States made his entry unlawful.

Judgment modified and affirmed.

Opinion in *United States* against *Prince Line, Ltd.*

UNITED STATES v. PRINCE LINE, LTD.

No. 217, Docket 21954.

United States Court of Appeals,
Second Circuit.

Argued March 15, 1951.

Decided May 16, 1951.

Before SWAN, CHASE and FRANK, Circuit Judges.

SWAN, Circuit Judge.

This appeal involves the deportation of an alien seaman who arrived at the port of New York in January 1941 as a member of the crew of a vessel owned by Prince Line, Ltd. He was inspected and granted

shore leave by an immigrant inspector and thereafter deserted his ship and remained in the United States, having obtained employment in a bowling alley in Brooklyn. In March 1942, deportation proceedings were initiated which resulted in the issuance on June 29, 1942, of a warrant of deportation, pursuant to which he was deported through the port of San Francisco, California, in March 1947, at a cost to the United States of $270.25. To recover reimbursement for this expense the United States sued Prince Line, Ltd. Upon the pleadings, supporting and opposing affidavits and the record of the administrative deportation proceedings, each party moved for summary judgment. The defendant's motion was granted. From the resulting judgment dismissing the complaint the United States has appealed.

The material part of section 14 of the Immigration Act of 1924, 8 U. S. C. A. § 214, reads as follows: "Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this chapter to enter the United States, or to have remained therein for a longer time than permitted under this chapter or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in sections 155 and 156 of this title."

Concededly the alien seaman was deportable. The dispute is whether he was deportable because he had "remained longer" than his shore leave permitted, as the trial court held, or because he was "not entitled" to enter, as the appellant contends. The "remained longer" ground is a cause "arising subsequent to entry," and the cost of deportation for such a cause

is payable from the governmental appropriation; but the "not entitled" ground is a cause arising prior to entry, and deportation for such a cause "shall be at the expense" of the owner of the vessel by which the alien came.[1] This suit is a test case and presents a question of first impression.

The facts are not in dispute. The alien, Amat Bin Hussain, was a native and a citizen of the Dutch East Indies. He had been a seaman for 13 years and on two previous voyages had come to the United States. The Prince Line vessel on which he was employed as a member of the crew arrived at the port of New York from Halifax, Nova Scotia on January 22, 1941. His documents were all in order for temporary admission as a seaman, and after inspection by an immigrant inspector he was granted shore leave in accordance with the regulations of the Immigration Service relating to alien seamen.[2] He was admitted on shore pass and deserted his ship. In March 1942 he was found by the immigration authorities and a warrant of arrest was applied for on the ground that he had remained in the United States longer than permitted by the Act or Regulations made thereunder. However, this ground was abandoned and the warrant of deportation stated that he was subject to deportation because (1) at the time of entry he was not in possession of an unexpired immigration visa,[3]

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[1] Section 20 of the Immigration Act of 1917, 8 U. S. C. A. § 156.

[2] 8 C. F. R. Part 120.

[3] 8 U. S. C. A. § 213(a): "No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa * * *."

and (2) he is a native of an island within the barred zone.[4] The Board of Immigration Appeals sustained these charges and also another, namely, that he is an alien ineligible to citizenship and not exempted by 8 U. S. C. A. § 213(c).[5] The evidentiary basis for sustaining these charges was an admission obtained from the alien in response to a leading question put to him at the deportation hearing on April 9, 1942.[6]

[1] Section 3 of the 1924 Act, 8 U. S. C. A. § 203, defines "immigrant" to mean any alien departing from outside the United States and destined for the United States, except "* * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in pursuit of his calling as a seaman."

The appellant argues the alien was not within this exception because he was not seeking to enter temporarily solely in pursuit of his calling but had already formed the intent to desert; that, not being within the exception, he was an immigrant and could not legally be admitted under 8 U. S. C. A. § 213 without an unexpired immigration visa. This argument presupposes that the phrase "seeking to enter," etc., refers to the seaman's subjective intent rather than to the reason he gives to the immigrant inspector for wishing to land, with the result that if he forms the intent to desert before going ashore he

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[4] 8 U. S. C. A. § 136(n).

[5] Why this additional charge was omitted from the warrant of deportation does not appear.

[6] "Q. At the time of your arrival on January 22, 1941 was it your intention to remain permanently in the United States? A. Yes I had intentions to remain and stay here."

forthwith becomes an immigrant required to be in possession of an unexpired immigration visa. We do not think such a construction of the statute is justified.

[2, 3] Before enactment of the Immigration Act of 1924, alien seamen who deserted ship were deportable under section 34 of the Immigration Act of 1917,[7] which contained a three year statute of limitations and provided for deportation at the expense of the appropriation provided in section 20.[8] Section 14 of the 1924 Act repealed by implication the provisions of said section 34 with respect to the three year limitation and the hearing before a board of special inquiry.[9] Thereafter for many years the practice of the immigration authorities, in the cases of deserting alien seamen, was to deport them on the ground that they had overstayed their leaves. The regulations adopted to carry out the 1924 Act were evidently drawn with this practice in mind. Section 120.37 provides that an alien temporarily admitted as a bona fide seaman "shall be deemed to have remained in the United States for a longer time than permitted" if he is found here after the expiration of his shore leave or any authorized extension thereof.[10] Another section provides: "Any alien who upon arrival establishes that he is a bona fide seaman as defined in

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[7] 8 U. S. C. A. § 166.

[8] 8 U. S. C. A. § 156.

[9] 8 U. S. C. A. § 214. See *Philippides* v. *Day*, 283 U. S. 48, 51 S. Ct. 358, 75 L. Ed. 833; *United States ex rel. Tsevdos* v. *Reimer*, 2 Cir. 108 F. 2d 860, 861; *United States ex rel. Vounas* v. *Hughes*, 3 Cir., 116 F. 2d 171.

[10] 8 C. F. R. § 120.37(a)(1).

§ 120.2 is admissible as a non-immigrant under section 3(5) of the Immigration Act of 1924 * * *"[11]

The use of the word "establishes" plainly indicates that what the alien says and the documents he submits to the examining immigrant inspector, rather than his subjective intent or concealed motive for wishing shore leave, are determinative of his status as a non-immigrant. This is further substantiated by the preceding section, § 120.20, entitled "Alien seamen seeking entry as immigrants." One does not "seek" entry as an immigrant without disclosing that fact. In the light of these regulations we are convinced that the construction which the appellant now seeks to put upon section 203(5) so as to convert an alien seaman into an "immigrant" by reason of his secret and undisclosed intent cannot be sustained.[12] Moreover, if it were sustained, the practical result likely to follow would be that in the future no ship would permit its alien seamen to go ashore in our ports, for it would be impossible for the shipowner to protect himself against the risk of having to bear the expense of deporting a deserting seaman if, years later, the immigration authorities could get the seaman to admit that

[11] 8 C. F. R. § 120.21(a).

[12] It is interesting to note that the appellant's theory is of comparatively recent origin. The affidavit of Mr. Lechner states: "Shortly before the beginning of the last war it came to my attention that the Immigration Service was indulging in a practice of obtaining when possible a statement from deserting seamen that it was their intention to remain in the United States at the time the vessel from which they deserted arrived at a port in the United States, and thereupon to order such deserting seamen deported, not as seamen but as intending immigrants. From that time on the Immigration Service began to demand that Furness, Withy & Company, Ltd. or owners of the vessels undertake the deportation of such deserting seamen, which we consistently refused to do, * * *".

he had, before getting shore leave, already formed the intention to desert. We cannot believe that Congress intended legislation which would be likely to produce such a result.

Our conclusion that such was not the Congressional intent is further supported in a ruling by the Board of Immigration Appeals, which held that the duty to detain an alien seaman under section 20 of the 1924 Act, 8 U. S. C. A. § 167, is completely discharged after the seaman is inspected and granted shore leave by an immigration officer.[13] It should also be noted that the Board has taken the position that a shipowner may not be subjected to a fine under section 16 of the Act of 1924, 8 U. S. C. A. § 216, for bringing to the United States an "immigrant" not in possession of an unexpired visa, where the "immigrant," having shipped as a bona fide seaman, did not announce his intention to take up permanent residence until his arrival and the shipowner in the exercise of reasonable diligence could not have discovered such intention. The Board stated that "A contrary holding would require the institution of fine proceedings * * * in the case of all seamen who remained longer than permitted and who upon apprehension testify they had formulated an intention prior to arrival of remaining permanently in the United States. Such a view could not be seriously maintained."[14] Finally, we refer again to the regulations, which certainly have construed Congressional purpose in a manner contrary to the government's present contentions.

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[13] *In the Matter of the S. S. "Favorit,"* 1 I. & N. Dec. 214.

[14] *In the Matter of the S. S. "Australind,"* 2 I. & N. Dec. 623, 626.

The appellant relies heavily on this court's decision in *Sleddens* v. *Shaughnessy,* 2 Cir., 177 F. 2d 363. That case construed section 203(2) relating to temporary visitors. While the logic of that decision may tend to support the appellant's position in the present case we do not deem it controlling in the case of alien seamen. Not only is the statutory language different but also no regulations in conflict with the construction we there adopted were brought to our attention.

For the foregoing reasons we agree with the district court that the alien was deportable on the ground that he overstayed his leave and not on the ground that he was an immigrant "not entitled" to entry. Judgment affirmed.

Excerpt from Decision of McGohey, *J.*, in the District Court

Denial of relief under the Refugee Act of 1953, however, stands on a different footing. Section 6 of that Act[2] provides that "Any alien who establishes that prior to July 1, 1953 he lawfully entered the United States as a bona fide non-immigrant and that because of events which had occurred subsequent to his entry into the United States he is unable to return to the country of his birth, or nationality or last residence, because of persecution or fear of persecution on account of race, religion, or political opinion, may, within one year after the effective date of this act (August 7, 1953) apply to the Attorney General of the United States for an adjustment of his immi-

[2] 51 U. S. C. A. App. 1971 d.

gration status." Relator was denied relief under this statute on the sole ground that his last entry was unlawful because at that time he had the undisclosed intention of remaining here at the expiration of his shore leave. Other points raised by the application were not considered.

The statutory construction on which that determination purports to rest has been rejected by the Courts of Appeals for the Second Circuit, *U. S.* v. *Prince Line* (1951), 189 F. 2d 386; and the District of Columbia Circuit, *Brownell* v. *Gutnayer,* F. 2d , decided April 22, 1954. It is clear under those cases that the relator may not be denied adjustment of his status as a displaced person on the theory that an intention to remain permanently in the United States made his last entry unlawful. Accordingly, his application for adjustment of his status having been decided on an incorrect theory of law must be reconsidered in the light of the correct theory announced in those decisions.

The order of deportation will be stayed and the writ will be allowed unless the respondent stipulates to withhold execution of the warrant of deportation until after reconsideration of the application under the correct theory of law and determination thereon.

Settle order.

Dated: New York, N. Y., June 22, 1954.

JOHN F. X. McGOHEY
John F. X. McGohey
U. S. D. J.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 80

UNITED STATES OF AMERICA, EX REL. JOSIP FERETIC, A/K/A JOE FERETIC, PETITIONER

v.

EDWARD J. SHAUGHNESSY, AS DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE FOR THE DISTRICT OF NEW YORK, ETC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 43–46) is not yet reported.

JURISDICTION

The judgment of the court of appeals (R. 46) was entered on April 4, 1955. The petition for a writ of certiorari was filed on May 14, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether an alien, who has obtained entry into the United States as a nonimmigrant seaman on

shore leave from his ship, is eligible for adjustment of status as a lawfully admitted displaced person where he admits that at the time of his entry he did not intend to return to his ship.

STATUTES INVOLVED

The pertinent provisions of the Displaced Persons Act of June 25, 1948, 62 Stat. 1009, as amended, and the Refugee Relief Act of August 7, 1953, 67 Stat. 400, are set out in the Appendix, *infra*, pp. 11–14.

STATEMENT

Petitioner, a native and citizen of Yugoslavia, last entered the United States on December 24, 1944, at San Pedro, California, as a seaman on shore leave for 29 days (R. 34, 36). At the time of his entry, he was not in possession of a valid immigration visa (R. 37).

Petitioner applied for adjustment of status under the Displaced Persons Act of 1948 (*infra*, pp. 11–12) and later, after deportation proceedings had been instituted against him, under the Refugee Relief Act of 1953 (*infra*, pp. 13–14). In the course of those proceedings, he conceded that at the time of his entry it was his intention to remain permanently in the United States (R. 35, 37). Both applications were denied on the ground that he was ineligible for the relief sought since his entry into the United States had not been a lawful one. (R. 34–42; see R. 14.)

After institution of the deportation hearings, petitioner also applied for a stay of deportation pursuant to the provisions of Section 243 (h) of the Immigration and Nationality Act of 1952 (8 U. S. C. 1253 (h)) on the ground that he would be subject to physical persecution if he returned to Yugoslavia. Such relief was denied, the presiding inspector having found that there was no persecution of petitioner's father, mother and brother who were living in Yugoslavia, and that petitioner himself stated that he would not be subject to persecution on account of religious or political opinions (R. 40; see R. 14).

On June 1, 1954, while in custody on a deportation warrant, petitioner applied for a writ of habeas corpus in the United States District Court for the Southern District of New York (R. 3–7). He alleged that his applications for relief as a displaced person had been improperly refused consideration on the ground that he was not eligible for such relief, and that he had been arbitrarily denied relief under Section 243 (h).

The district court held that there was a reasonable basis for denying petitioner's application for relief under Section 243 (h), but that the denial of petitioner's application for relief as a displaced person was based on an error of law (R. 12–15). That court was of the view that petitioner's undisclosed intention of remaining in the United States at the time he entered as a nonimmigrant alien crewman did not render his last

entry unlawful so as to deprive him of the right to apply for adjustment of status (R. 14–15). The writ was accordingly granted (R. 21–23).

On appeal the judgment was reversed (R. 46). The court of appeals ruled that petitioner, by reason of his intention to remain in the United States at the time of his last entry, as disclosed by his admissions in subsequent administrative proceedings, was not lawfully in the United States as a nonimmigrant alien seaman and was not, therefore, eligible for relief under the Displaced Persons Act of 1948, as amended, or the Refugee Relief Act of 1953.

ARGUMENT

Petitioner does not deny that, under the Displaced Persons Act of 1948, as amended, and the Refugee Relief Act of 1953 (*infra*, pp. 11–14), a nonimmigrant alien, to be eligible for adjustment of his status as a displaced person, must show that he lawfully entered the United States.[1] He con-

[1] That condition is clear from the language of the statutes. Thus Section 4 (b) of the Displaced Persons Act describes as eligible for relief "a person who establishes that he lawfully entered the United States as a non-immigrant under section 3 or as a nonquota immigrant student under subdivision (e) of Section 4 of the Immigration Act of May 26, 1924, as amended * * *." Section 6 of the Refugee Relief Act of 1953 provides relief for "Any alien who establishes that prior to July 1, 1953, he lawfully entered the United States as a bona fide nonimmigrant * * *." The legislative history confirms the intention to limit relief to "bona fide" nonimmigrants. H. Rep. No. 974, 83d Cong., 1st Sess., p. 17; S. Rep. No. 629, 83d

tends that the permission granted him by an immigration inspector, who found his papers to be in good order, to enter as a nonimmigrant alien seaman constitutes such lawful entry as will qualify him for relief as a displaced person. As the court below ruled, however, petitioner's intention at the time of his entry to remain permanently in the United States constituted a fraud upon the immigration inspector who admitted him and such fraud rendered his last entry unlawful. That the fraud was proved by petitioner's subsequent admission thereof does not alter the fraudulent character of the entry.

Whether petitioner lawfully entered the United States must be determined by reference to the statutes and regulations in force at the time he was granted shore leave in San Pedro, California, on December 24, 1944. The Immigration Act of May 26, 1924, which was then in force, provided in Section 3 (8 U. S. C. (1940 ed.) 203) as follows:

> When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except * * * (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter tem-

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Cong., 1st Sess., p. 7. On May 27, 1955, the President recommended to Congress that the law be changed to provide for waiver of the lawful entry condition in meritorious cases.

> porarily the United States solely in the pursuit of his calling as a seaman, * * *.

The regulations of the Immigration and Naturalization Service, pertaining to nonimmigrant alien crewmen, 8 C. F. R. (1949 ed.) 120.2, provided:

> *Bona fide alien seamen defined.* As used in section 3 (5) of the Immigration Act of 1924 (43 Stat. 154; 8 U. S. C. 203), the term "bona fide alien seaman" means any alien who in good faith is signed on the articles of a vessel arriving at a port of the United States from any place outside thereof, employed in any capacity on board such vessel, and seeking to enter the United States temporarily solely in the pursuit of his calling as a seaman, with the intention of departing with the vessel or reshipping on board any other vessel for any foreign port or place.

Section 3 (5), by according nonimmigrant status to alien crewmen who seek to enter temporarily the United States, implicitly makes the intent of the crewman at the time of entry critical. The fact that the regulation of the Immigration and Naturalization Service, which interprets this section to prescribe that the alien seaman must intend at the time of entry to return to his vessel to be a lawful nonimmigrant, has not been altered or amended by Congress is strong evidence of its correctness. *Costanzo* v. *Tillinghast,* 287 U. S. 341, 345. It is clear, therefore, that if petitioner had, at the time he requested shore

leave, indicated to the immigration inspector that he did not intend to return to the ship, he would not have been granted clearance.

That petitioner successfully concealed his intent not to return to the ship until after he had come ashore in the United States is no bar to his deportation. Section 14 of the Immigration Act of 1924, 8 U. S. C. (1940 ed.) 214, anticipated this situation when it provided:

> Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States * * * shall be taken into custody and deported * * *.

This was a manifest recognition by Congress that fraud may be committed by alien crewmen on immigration inspectors in gaining admission to the United States and a declaration of intent that such fraud shall vitiate the legality of the entry.

In determining the lawfulness of petitioner's entry it is of no moment in what legal manner the fraudulent entry is proved. The fact that petitioner himself several times admitted during formal administrative hearings that at the time he requested shore leave he did not intend to return to his vessel serves only to strengthen the conclusion that he did not lawfully enter the United States.

The decision below is not in conflict with *United States* v. *Prince Line, Ltd.*, 189 F. 2d 386 (C. A.

2), (which, in any event, is from the same circuit) nor with *Brownell* v. *Gutnayer,* 212 F. 2d 462 (C. A. D. C.) relied upon by petitioner. The *Prince Line* case involved a suit brought by the United States to recover the cost of deporting an alien seaman who had arrived on a vessel owned by Prince Line, Ltd. Conceding that the alien seaman was deportable, the issue was whether he was deportable for overstaying his leave or deportable because not entitled to enter. If the deportation rested on overstaying leave, the United States had to bear the cost; if on ineligibility to enter, the steamship company. Though that case resembled the instant case in the facts surrounding the alien seaman's subsequent admission of fraud arising from his concealed intent at the time of entry, it involved an attempt to bind the steamship company by the admission whereas, in this case, only the alien himself is affected adversely by his own admission. The court below in this case distinguished its prior *Prince* decision on the ground that the rights of third parties were involved (R. 46).

The *Gutnayer* case involved a foreign diplomat who was admitted as a nonimmigrant to the United States. Since the intent of a foreign diplomat has no bearing on his admissibility as a nonimmigrant (which is determined only by reference to his credentials) that case is distinguishable from the instant proceeding.

Sleddens v. *Shaughnessy*, 177 F. 2d 363 (C. A. 2) involved a situation substantially the same as in the instant case. Sleddens, a Dutch trader, had been admitted to the United States as a nonimmigrant to develop his business outlets. By his subsequent admissions, it was established that at the time of his entry he intended to remain permanently in the United States. The court, in sustaining an order for deportation, ruled that intent to remain in the United States at time of entry will vitiate the nonimmigrant status which is granted to those persons on condition that they do not intend to remain. In respect to the element of intent, an alien crewman is in the same legal category with alien traders—not with alien diplomats.[2]

CONCLUSION

The decision below is correct and presents no conflict of decisions. It is therefore respectfully

[2] Petitioner's contention that he was entitled to have the hearings which were granted to him under Section 6 of the Refugee Relief Act of 1953, *infra*, pp. 13–14, conducted in compliance with the Administrative Procedure Act is without merit. Section 15 of the Refugee Relief Act (67 Stat. 400, 406) provides that "* * * all of the provisions of the Immigration and Nationality Act (66 Stat. 163) shall be applicable under this Act." This Court has recently held in *Marcello* v. *Bonds*, No. 145, O. T. 1954, decided May 31, 1955, that the Immigration and Nationality Act expressly sets up its own procedures, and that the Administrative Procedure Act is inapplicable to proceedings arising thereunder. Hence, the Administrative Procedure Act is not controlling.

submitted that the petition for a writ of certiorari should be denied.

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APPENDIX

Displaced Persons Act of June 25, 1948, 62 Stat. 1009, as amended by the Acts of June 16, 1950, 64 Stat. 219, and June 27, 1952, 66 Stat. 277:

SEC. 4. (a) Any alien who (1) entered the United States prior to April 30, 1949, and was on that date in the United States, or if he was temporarily absent from the United States on that date for reasons which, in accordance with regulations to be promulgated by the Attorney General, show special circumstances justifying such absence, and (2) is otherwise admissible under the immigration laws, and (3) is a displaced person residing in the United States as defined in this section may, within two years next following the effective date of this Act, as amended, apply to the Attorney General for an adjustment of his immigration status. If the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien has been of good moral character for the preceding five years and that such alien is qualified under the provisions of this section, the Attorney General shall report to the Congress all of the pertinent facts in the case. If during the session of the Congress at which a case is reported, or prior to the end of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution stating in substance that it favors the granting of the status of permanent residence to such alien

the Attorney General is authorized, upon receipt of a fee of $18, which shall be deposited in the Treasury of the United States to the account of miscellaneous receipts, to record the admission of the alien for permanent residence as of the date of the alien's last entry into the United States. If prior to the end of the session of the Congress next following the session at which a case is reported, the Congress does not pass such resolution, the Attorney General shall thereupon deport such alien in the manner provided by law: *Provided,* That the number of displaced persons who shall be granted the status of permanent residence pursuant to this section shall not exceed 15,000. Upon the grant of status of permanent residence to such alien as provided for in this section, the Secretary of State shall, if the alien was a quota immigrant at the time of entry, reduce by one the annual quota to which an immigrant is chargeable as provided in section 202 of the Immigration and Nationality Act for the fiscal year then current or the next succeeding fiscal year in which a quota number is available, except that quota deductions provided for in this section shall be made within the limitations contained in the first proviso of subsection (c) of section 3 of the Displaced Persons Act of 1948, as amended.

(b) When used in this section the term "Displaced Person residing in the United States" means a person who establishes that he lawfully entered the United States as a non-immigrant under section 3 or as a nonquota immigrant student under subdivision (e) of Section 4 of the Immigration Act of May 26, 1924, as amended, and that he is a person displaced from the

country of his birth, or nationality, or of his last residence as a result of events subsequent to the out-break of World War II; and that he cannot return to any of such countries because of persecution or fear of persecution on account of race, religion or political opinions.

Refugee Relief Act of August 7, 1953, 67 Stat. 400:

SEC. 6. Any alien who establishes that prior to July 1, 1953, he lawfully entered the United States as a bona fide nonimmigrant and that because of events which have occurred subsequent to his entry into the United States he is unable to return to the country of his birth, or nationality, or last residence, because of persecution or fear of persecution on account of race, religion, or political opinion, may, within one year after the effective date of this Act, apply to the Attorney General of the United States for an adjustment of his immigration status. If the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien has been of good moral character for the preceding five years and that the alien was physically present in the United States on the date of the enactment of this Act and is otherwise qualified under all other provisions of the Immigration and Nationality Act except that the quota to which he is chargeable is oversubscribed, the Attorney General shall report to the Congress all the pertinent facts in the case. If, during the session of the Congress in which a case is reported or prior to the end of the session of the Congress next following the session in which a case is reported, the Congress passes a concurrent resolution stating in substance that it approves the granting

of the status of an alien lawfully admitted for permanent residence to such alien, the Attorney General is authorized, upon the payment of the required visa fee, which shall be deposited in the Treasury of the United States to the account of miscellaneous receipts, to record the alien's lawful admission for permanent residence as of the date of the passage of such concurrent resolution. If, within the above specified time, the Congress does not pass such a concurrent resolution, or, if either the Senate or the House of Representatives passes a resolution stating in substance that it does not approve the granting of the status of an alien lawfully admitted for permanent residence, the Attorney General shall thereupon deport such alien in the manner provided by law: *Provided,* That the provisions of this section shall not be applicable to any aliens admitted into the United States under the provisions of Public Law 584, Seventy-ninth Congress, second session (60 Stat. 754), Public Law 402, Eightieth Congress, second session (62 Stat. 6): *Provided further,* That the number of aliens who shall be granted the status of aliens lawfully admitted for permanent residence pursuant to this section shall not exceed five thousand.

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